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September 11, 2007

**HAND DELIVERED**

Honorable Ross Johnson, Chairman  
Commissioners Ray Remy, Gene Huguenin,  
Bob Leidigh and Tim Hodson  
Fair Political Practices Commission  
428 J Street, Suite 620  
Sacramento, CA 95814

Re: Agenda Item 11 - Pre-Notice of Regulation 18530.4

Dear Mr. Chairman and Commissioners:

The following comments are submitted concerning the proposed regulation.

We believe that the changes proposed for Regulation 18530.4 are, for the most part, an improvement from the current regulation and provide greater assistance and clarity to the regulated community on how legal defense committees may be legally employed.

However, the staff proposes to substantively revise the subdivision limiting not only the use of funds received by legal defense committees but the raising of contributions to pay for fund raising for the legal defense fund..

However, the proposed revision to Regulation 18530.4 raises two problems that can easily be corrected: (1) by limiting but not disallowing the raising of funds to pay for reasonable administrative and fund raising expenses; and (2) by including recounts as proceedings within the scope of the legal defense fund's activities or expressly permitting the funding of recounts after an election as an election-related expense.

## **1. Fund raising expenses**

Subdivision (e) of the current regulation appeared to allow the candidate or officeholder's legal defense fund to raise money to pay for fund raising costs "reasonably related" to defray the costs related to the committee. This was assumed to include fund raising and administrative expenses for the legal defense fund. This was a reasonable approach to this subject. We note that subdivision (a) of Gov't Code § 85304 does state that funds "may be used only to defray those attorneys' fees and other related legal costs," and could be construed narrowly.

While some constraint may be appropriate to ensure that the legal defense fund does not become an opportunity for lavish fund raising expenses that confer personal benefits on candidates, officeholders and those who may be solicited to participate (and benefit themselves from) lavish fund raising events, a complete bar seems unwarranted and unreasonable, particularly in circumstances in which the candidate or officeholder is barred from raising funds after an election.

The proposed amendments could bar a candidate's election committee from raising funds to pay for bona fide fund raising expenses if incurred after an election, or could require the officeholder to establish an officeholder account to defray such costs. In the case of a defeated candidate who had campaign debt, the proposed regulation would appear to prohibit that candidate from raising any funds to defray bona fide fund raising expenses of a legal defense fund.

Would fund raising expenses be permissible expenditures for which a candidate could raise funds 'post-election' or from an officeholding account, under current law: (e.g., Gov't Code §§ 85316(b) ['costs associated with holding office?'], 85316(a) [prohibited unless the costs would be within post-election 'net debts outstanding?'], 89512 ['reasonably related to a political purpose?'] or 89513(b)(1) ['professional services directly related to a political purpose?'].

## **2. Recount expenses**

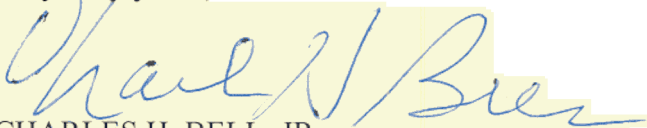
Second, the draft regulation excludes recounts from those expenses a legal defense fund may pay. A recount may be the type of proceeding for which a candidate could raise funds after an election (viz., includable in 'net debts outstanding' from the election), unless the Commission excluded raising money after an election to pay for recounts. from the scope of Gov't Code § 85316, subdivision (a). Regulation 18531.61 – which regulates the raising of money to pay for post-election costs – does not address this issue.

We understand from your Agenda Item 12 Regulation Calendar that the staff is reviewing this issue and will include that consideration in pre-notice of amendments to Regulation 18531.61 in October, 2007.

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Thank you for your consideration of this matter.

Very truly yours,



CHARLES H. BELL, JR.